

## **REMARKS/ARGUMENTS**

Reconsideration of this application, as amended, is respectfully requested.

### **Regarding the Claims**

**The Office has rejected claims 1-5, 15, 16, 23, 24, 28, 29, 38, 39 and 44-46 under 35 USC 112, as failing to comply with the enablement requirement.** The Office action has indicated that the claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

This rejection was discussed with the Examiner in a telephone interview on October 22, 2008, as documented separately in the Applicant's Interview Summary filed herewith and in the Interview Summary filed by the Examiner on November 13, 2008. The Office has subsequently withdrawn the rejection as indicated in the Interview Summary filed by the Examiner. Therefore, no further remarks regarding this rejection are being submitted.

### **Claim Rejections Based on the Cited Art**

The Office has made various rejections under 35 USC 102 and 35 USC 103 as recited on pp. 3 – 7 of the Office action. The Applicant wishes to first address the rejection under 35 USC 103 on page 5 of the Office action, because certain claims have been amended to overcome this rejection. Following the remarks and arguments on this rejection, the remaining rejections will be

addressed in view of these amendments, in the order originally presented in the Office action on pp. 3 – 4 and pp. 6 – 7.

**The Office has rejected claims 1-5, 16, 23, 24 and 48-51 under 35 USC 103(a), as being unpatentable over United States patent 4,569,638 of Harker in view of United States patent 5,865,597 of Ozawa et al.**

The Applicant has amended claim 1, adding further features in new paragraph g., “an annular region formed in said housing within said pump cavity, said annular region comprising a counterbore within which is disposed a seal, said annular region enclosing a seal flood region, and said annular region including an upper passageway between said pump cavity and said seal flood region and a lower passageway between said pump cavity and said seal flood region, both of said upper passageway and said lower passageway being formed as a part of said housing.”

The bases for the amendment of claim 1 may be found at page 19 line 10 – page 20 line 14, and in Fig. 9, seal 320, exclusionary plate 170, annular region 141, seal flood region 175, upper passageway 174 and lower passageway 176.

The Applicant notes that neither the disclosure of Harker nor the disclosure of Ozawa show or suggest a structure wherein the upper and lower passageways as recited in paragraph g. are formed as a part of the housing. As the Office action states on page 5 thereof, Harker does not teach first and second passageways, and with regard to the teaching of Ozawa, the Office action states, “There are first and second passageways between the pump cavity and the seal flood region (the upper and lower passages between plate 38, 18

and the back of impeller plate 16a)." For at least this reason, it is respectfully submitted that claim 1 as amended is therefore allowable over the asserted combination of Harker and Ozawa.

Claim 2 has been amended to more clearly recite the location of the exclusionary plate as being between the volute chamber and the annular region of the housing. Bases may be found in the specification and drawings as cited for the amendment of claim 1. It is respectfully submitted that claim 2 as amended, by virtue of its dependence upon amended claim 1 which is allowable, is therefore also allowable over the asserted combination.

Claims 3 and 4 have been cancelled.

Independent claim 5 has been amended to recite in paragraph a., "a housing formed of a single unitary part" as in paragraph a. of claim 1; and in paragraph d., the volute comprising "a wall formed as a part of said housing, wherein a cross port is formed through said wall;" and in paragraph h., with respect to the upper and lower passageways, "both of said upper passageway and said lower passageway being formed as a part of said housing."

Bases for the amendment of paragraph d. may be found at page 16 line 5 and in Fig. 9, port 161. Bases for the amendment of paragraph h. are as provided for the amendment of paragraph g. of claim 1.

Neither the disclosure of Harker nor the disclosure of Ozawa teach a cross port formed in the volute wall as recited in amended paragraph d. Additionally, paragraph h. of amended claim 5 now recites the same feature as new paragraph g. of amended claim 1. How this feature renders the claim patentable

over the Harker and Ozawa cited art has been explained for amended claim 1, and is equally applicable for amended claim 5. It is respectfully submitted that claim 5 as amended is allowable.

Claim 16 has been amended to depend upon amended claim 1. The feature of paragraph a. of claim 16 has been stricken due to redundancy with paragraph a. of amended claim 1, and the remaining paragraphs of claim 16 have been re-lettered a. – c. accordingly. It is respectfully submitted that claim 16 as amended, by virtue of its dependence upon amended claim 1 which is allowable, is therefore also allowable over the asserted combination. It is further respectfully submitted that claims 23 and 24, by virtue of their dependence upon amended claim 16 which is allowable, are therefore also allowable over the asserted combination.

Independent claim 48 has been amended to recite in paragraph e. the same feature as has been recited in new paragraph g. of amended claim 1. How this feature renders the claim patentable over the Harker and Ozawa cited art has been explained for amended claim 1, and is equally applicable for amended claim 48. It is respectfully submitted that claim 48 as amended is allowable.

Claim 49, which depends upon claim 48, has been amended such that the language regarding the annular region feature has been stricken, and the exclusionary plate feature previously recited and now stricken from amended claim 48 has been added. It is respectfully submitted that claim 49 as amended, by virtue of its dependence upon amended claim 48 which is allowable, is therefore also allowable.

Claim 50 has been cancelled.

Claim 51 has been amended in the same manner as paragraph d. of amended claim 5, and also to depend upon amended claim 48 instead of claim 50. It is respectfully submitted that claim 51 as amended, by virtue of its dependence upon amended claim 48 which is allowable, is therefore also allowable over the asserted combination.

**The Office has rejected claims 1, 29, 39, and 45 under 35 USC 103(a), as being unpatentable over United States patent 2,312,525 of Curtis in view of United States patent 6,524,085 of Shoda.**

The Applicant has amended claim 1 by adding new paragraph g. as previously described on page 13 of this Amendment. Neither the disclosure of Curtis nor the disclosure of Shoda show or suggest a housing including the annular region, counterbore, seal, seal flood region, and upper and lower passageways as recited in paragraph g. of amended claim 1. For at least this reason, it is respectfully submitted that claim 1 as amended is therefore allowable over the asserted combination of Harker and Ozawa.

Claim 29 has been amended to depend upon amended claim 1. The feature of paragraph a. of claim 29 has been stricken due to redundancy with paragraph a. of amended claim 1, and the remaining paragraphs of claim 29 have been re-lettered a. – c. accordingly. It is respectfully submitted that claim 29 as amended, by virtue of its dependence upon amended claim 1 which is allowable, is therefore also allowable over the asserted combination. It is further respectfully submitted that claims 39 and 45, by virtue of their dependence upon

amended claim 29 which is allowable, are therefore also allowable over the asserted combination.

**The Office has rejected claims 16, 23, 24, 29, and 38 under 35 USC 103(a), as being unpatentable over United States patent 6,464,471 of Mathis et al. in view of United States patent 6,524,085 of Shoda.**

As noted previously, claim 16 has been amended to depend upon amended claim 1. Neither the disclosure of Mathis nor the disclosure of Shoda show or suggest a housing including the annular region, counterbore, seal, seal flood region, and upper and lower passageways as recited in paragraph g. of amended claim 1. For at least this reason, it is respectfully submitted that amended claim 16, by virtue of its dependence upon amended claim 1 is therefore allowable over the asserted combination of Mathis and Shoda. It is further respectfully submitted that claims 23 and 24, by virtue of their dependence upon amended claim 16 which is allowable, are therefore also allowable over the asserted combination.

As noted previously, claim 29 has been amended to depend upon amended claim 1. For the same reason recited above for claim 16, it is respectfully submitted that amended claim 29, by virtue of its dependence upon amended claim 1 is therefore allowable over the asserted combination of Mathis and Shoda. It is further respectfully submitted that claim 38, by virtue of its dependence upon amended claim 29 which is allowable, is therefore also allowable over the asserted combination.

**The Office has rejected Claims 1 - 3 under 35 USC 103(a), as being unpatentable over United States patent 4,569,638 of Harker in view of United States patent 2,312,525 of Curtis.**

The Applicant has amended claim 1 by adding new paragraph g. as previously described on page 13 of this Amendment. Neither the disclosure of Harker nor the disclosure of Curtis show or suggest a housing including the annular region, counterbore, seal, seal flood region, and upper and lower passageways as recited in paragraph g. of amended claim 1. For at least this reason, it is respectfully submitted that claim 1 as amended is therefore allowable over the asserted combination of Harker and Curtis. It is respectfully submitted that claim 2 as amended, by virtue of its dependence upon amended claim 1 which is allowable, is therefore also allowable over the asserted combination. Claim 3 has been cancelled.

**The Office has rejected Claims 15 under 35 USC 103(a), as being unpatentable over United States patent 4,569,638 of Harker in view of United States patent 2,312,525 of Curtis, or United States patent 2,312,525 of Curtis in view of United States patent 6,524,085 of Shoda, and further in view of United States patent 5,248,238 of Ishida.**

Claim 15 has been amended, striking the word "unitary" therefrom. This is because the term "unitary housing" is no longer recited in claim 1, and thus the amendment is needed for proper antecedent basis.

The Applicant has amended claim 1 by adding new paragraph g. as previously described on page 13 of this Amendment. None of the above

asserted combinations show or suggest a housing including the annular region, counterbore, seal, seal flood region, and upper and lower passageways as recited in paragraph g. of amended claim 1. For at least this reason, it is respectfully submitted that claim 15, by virtue of its dependence upon amended claim 1 is therefore allowable over these asserted combinations.

**The Office has rejected claims 15 and 28 under 35 USC 103(a), as being unpatentable over United States patent 4,569,638 of Harker in view of United States patent 5,865,597 of Ozawa et al. and further in view of United States patent 5,248,238 of Ishida.**

Following a similar line of argument as recited above for claim 15, the asserted combination of Harker, Ozawa, and Ishida does not show or suggest a housing including the annular region, counterbore, seal, seal flood region, and upper and lower passageways as recited in paragraph g. of amended claim 1. For at least this reason, it is respectfully submitted that claim 15, by virtue of its dependence upon amended claim 1 is therefore allowable over this asserted combination.

Claim 28 has been amended, striking the word "unitary" therefrom. This is because the term "unitary housing" is no longer recited in claim 1 (upon which claim 28 now depends by the amendment of claim 16) and thus the amendment is needed for proper antecedent basis. It is respectfully submitted that claim 28, by virtue of its dependence upon amended claim 16 which is allowable, is therefore also allowable over the asserted combination.



**The Office has rejected claims 44 and 46 under 35 USC 103(a), as being unpatentable over United States patent 6,464,471 of Mathis et al. in view of United States patent 6,524,085 of Shoda, and further in view of United States patent 4,162, 419 of DeAngelis.**

Claims 44 and 46 depend upon claim 29, which has been amended to depend upon claim 1. None of the disclosures of Mathis, Shoda, or DeAngelis, alone or in combination show or suggest a housing including the annular region, counterbore, seal, seal flood region, and upper and lower passageways as recited in paragraph g. of amended claim 1. For at least this reason, it is respectfully submitted that claims 44 and 46, by virtue of their dependence upon amended claim 16 and amended claim 1 are therefore allowable over the asserted combination of Mathis, Shoda, and DeAngelis.

In view of the foregoing, the Applicant respectfully submits that the independent claims patentably define the present invention over the citations of record. Further, the dependent claims should also be allowable for the same reasons as their respective base claims and further due to the additional features that they recite. Separate and individual consideration of the dependent claims is respectfully requested. The Applicant further notes that for various claims, additional arguments for patentability could be made. The absence of such additional patentability arguments should not be construed as either a disclaimer of such arguments or that such arguments are not believed to be meritorious.

By the instant amendment, the Applicant has amended his case, thereby placing claims 1, 2, 5, 15, 16, 23, 24, 28, 29, 38, 39, 44 – 46, 48, 49, and 51 in

allowable form. It is respectfully submitted that with the instant amendment, the Applicant's case is allowable, and allowance thereof is respectfully requested.

To obtain entry of this Amendment, the Applicant is submitting a Petition for a One Month Extension of Time herewith. The Applicant's agent will submit the required fee via EFS-Web at the time of filing this Amendment. The Applicant also submits herewith a Summary of Interview for the interview with the Examiner on October 22, 2008.

If for any reason the Examiner believes that a telephone conference might facilitate the prosecution of this case, he is respectfully requested to call Applicant's agent, John M. Hammond.

Respectfully submitted,

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